

August 27, 2002

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E9900157A**

TERRY W. SPENCER
Code Enforcement Appeal

Location: 25615 SE 216th Street

Appellant: **Terry Spencer**
25615 Southeast 216th Street
Maple Valley, WA 98038-7604

King County: Department of Development and Environmental Services,
Building Services Division, Code Enforcement Section,
represented by **DenoBi Olegba**
900 Oakesdale Avenue SW
Renton, WA 98055-1219
Telephone: (206) 205-1528
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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:
Department's Final Recommendation:
Examiner's Decision:

Deny appeal
Deny appeal
Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened:
Hearing Closed:

July 30, 2002
August 20, 2002

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

KEY WORDS/TOPICS ADDRESSED:

- Outdoor storage
- Occupancy
- Dwellings
- Uniform Building Code

SUMMARY:

Denies an appeal from code enforcement notice and order regarding occupancy of dwellings without required permits and inspections.

FINDINGS:

1. **Notice and order served.** On February 21, 2002, the Department of Development and Environmental Services (“Department” or “DDES”) served a notice and order on Terry Spencer regarding his RA5 classified property at 25615 Southeast 206th Street in unincorporated King County.¹ The two parcels comprise 1.52 acres and 1.92 acres, totaling 3.44 acres. The notice and order cites the property for the following alleged violations:
 - a. Occupancy of dwellings constructed without the required permits and inspections.
 - b. Construction of buildings without required permits and inspections.
 - c. Construction of a retaining wall over four feet in height without the required permits.
 - d. Storage and/or sale of military surplus items including heavy equipment, trailers, containers and vehicles.

For the first three citations, the notice and order relies on KCC 16.04, KCC 16.16 and Uniform Building Code (UBC) section 106.1. The final citation, regarding outdoor storage and sales in a residential zone, relies on KCC 21A.08.030 (the residential zone in which the subject property is located) and KCC 21A.08.080 (the industrial zone within which outdoor storage and sales of heavy equipment, trailers, containers and vehicles and similar items is first permitted).

In order to bring the property into compliance with the cited codes, the notice and order commands the property owner to cease occupancy of the dwellings until inspected and

¹ Also identified as assessor’s tax parcel nos. 11206-9067 and 11206-9104.

improved, to submit a complete application for dwellings, accessory buildings and retaining wall by a specified date, and to meet all deadlines for submittal of additional requested information associated with the permit application. In the alternative, the notice and order requires the property owner to obtain a demolition permit and to demolish/remove the cited structures. Finally, the notice and order requires that the storage/sales of military surplus equipment from this site must be discontinued or reduced in scale consistent with King County home occupation standards.

The Department has since withdrawn its citation of the retaining wall.

1. **Appeal filed.** Terry Spencer (“Appellant”) filed an appeal accepted as timely on March 26, 2002. The Appellant no longer contests certain portions of the notice and order. Most particularly, he agrees to cease sales and storage of the military surplus equipment and other materials and has reduced the presence of the equipment and other material on the property by approximately two-thirds. Based on his substantial progress toward compliance and the fact that he lives in the United States only approximately half of each year, the Appellant asks for additional time to complete the outdoor storage removal. He does not contest the citation, however.

The notice and order calls for compliance with original building permit requirements as well as building permit and occupancy requirements for modifications to the structures of concern occurring over the past twenty years or so. The Appellant’s response comes in two parts. First, he contests the original building permit requirement. Second, he asks for additional time to comply with permitting requirements. The additional time request is based upon not only his half-year annual absence from the United States, but also on recently learned complexity of the application process and requirements. This process requires the Appellant, should he apply for the requisite building permits, to first obtain water source approval. That apparently will require obtaining easements from neighboring properties. It may very well also require obtaining septic disposal approval and a boundary line adjustment (BLA) between the two parcels. For these reasons, the Appellant, expecting to leave for his other home in New Zealand on November 1, 2002, asks for 12 to 24 months to achieve compliance. In addition, he asks for some degree of latitude by allowing continued occupancy of rental units in the cited buildings in order not to disrupt the lives of the tenants and in order to allow continued cash flow necessary to remedy the deficiencies at issue.

2. **Department response to appeal.** The Department opposes any postponement of compliance deadlines, arguing that this case has pended since 1999 without resolution. The Department also correctly observes that the Appellant’s periodic absences do not provide sufficient grounds upon which to postpone compliance with codes having health and safety implications. If the examiner were to grant some compliance delay, the Department asks that Appellant Spencer be required to designate an agent having authority to act on his behalf with regard to the code enforcement compliance requirements during his absence.

4. **Additional findings.** The following additional findings are relevant:

- a. There are four buildings on the subject property. For consistency of reference they have been referred to in the hearing as the “cream house,” “brown building,” “red barn,” “blue building” and the “L-building.”
- b. The cream house, the most northern of the buildings, located nearest Southeast 216th Street, is the oldest residence on the property. The house was constructed as a single-story structure with a daylight basement. Originally constructed with four bedrooms, it has been remodeled as a duplex. The Department has no record of any building permits, either for the original construction or the remodel. The remodel includes significant alteration of the lower floor in order to accommodate the duplex use and several aspects of that remodel fail to meet Uniform Housing Code (UHC) standards. The cream house was constructed by Herr Lumber Company, a reputable building construction and building supply firm in south King County during the 1950’s, 60’s and 70’s. Appellant Spencer argues that it is highly unlikely that such a reputable firm would have constructed the residence without required permits.
- c. The brown building is located on both of the parcels owned by the Appellant. Code Enforcement Assistant Supervisor Steven Wright describes the brown building as “an old garage-type, accessory structure visible in old photos [that] has been converted to a studio-style dwelling.” The conversion includes the construction of a wooden floor system approximately 10” above the foundation slab, 8” less than required by the UBC. Although the brown building is old, its alteration to accommodate dwelling occupancy is not. Mr. Wright reports that, “these alterations will have to be removed unless they can be demonstrated to be legal non-conforming.” The likelihood of demonstrating legal non-conforming status for the bathroom framing and plumbing of the brown building is unlikely because, as Mr. Wright reports, the alteration is new. The brown building is not presently occupied, although it was occupied by the Appellant’s mother at the time of the February 21, 2002 inspection.
- d. The red barn is an old agricultural-style building that is essentially unmodified since construction. No permits are required.
- e. The blue building comprises approximately 4,000 square feet. The parties agree that it was constructed without permits. It is used primarily for storage but has one end used as a dwelling. The dwelling portion of the building is two-stories tall and has three bedrooms, none of which meet minimum standards for ingress/egress, lighting and ventilation. A portion of the building consists of a shed roof that extends to the property line. There are two concerns regarding the blue building. First, there are no permits of record regarding the building itself. Second, the dwelling portion of the building requires availability of water and septic systems consistent with Seattle-King County Department of Public Health standards. The Appellant contracted to build the blue building, first as a pole building, in 1980. The various modifications—enclosure, flooring, dwelling—have occurred since, all without required permits.

- f. The so-called L-building is a large shed roof located in the most southeastern corner of the property. If the L-building was constructed before 1993, a building permit must be required. If built after 1993, it must be relocated (due to setback violations) pursuant to permit or must be removed.
- g. The notice and order does not cite any of the buildings for UHC violations. However, it is clear that they must be addressed as a matter of building permit compliance. Nor does the notice and order cite the property for violation of subdivision regulations (KCC Title 19 and RCW 58.17). The evidence shows, however, that because buildings (most particularly, dwellings) have been placed on the two lots without regard to lot boundaries, subdivision compliance will be necessary, most probably a boundary line adjustment (BLA).
- h. The present owners and predecessor owners of the same family have consistently through the decades ignored the permitting requirements and codes. The Appellant, in seeking to bring compliance up to date as a consequence of this code enforcement action, has discovered that decades of proactive non-compliance have resulted in a regulatory can of worms. Before permits can be applied for, the Department of Public Health approval must be obtained for water and septic disposal. Before those approvals can be obtained, the Appellant testifies that he will need to obtain easements from two neighboring property owners. The overall solution may also require (as noted above) a BLA. Again, the BLA application cannot be accepted without Department of Public Health septic and water approval.
- i. Aside from the permitting problems, Appellant Spencer has made substantial progress toward compliance regarding the illegal outdoor storage of military surplus, heavy equipment and other materials for commercial purposes. As noted above, approximately two-thirds of the material has been removed as of August 20, 2002. Appellant Spencer does not contest the facts regarding the outdoor storage citation nor does he contest the citation. Rather, he asks for additional time to complete compliance efforts.
- j. Septic approvals often require wet season soils percolation tests. Thus, it would be impossible for the Appellant to obtain septic approval before next spring if the Department of Public Health requires wet season testing.
- k. A particularly problematic aspect of this review concerns whether proper permits and inspections were obtained regarding the buildings of concern—except for the blue building, which the Appellant concedes was constructed without permits. The Department has destroyed the relevant records regarding all permits issued prior to 1970. The assertion that the cream house, brown building and barn were constructed prior to that date is uncontested. The Department suggests that perhaps the Appellant should research the matter further by seeking relevant permitting information from the King County Assessor's Office. The Appellant testifies that he has already done that and has investigated other possible sources of permit issuance documentation as well, to no avail. The Department itself has made no effort to follow those same avenues of research that it recommends.

5. **Case history.** The Department opened this case in 1999 in response to a complaint of sales of military surplus, construction without permits and construction of a retaining wall without permits. The Department did not issue its notice and order, however, until February 21, 2002. Subsequently, the Department accepted the instant appeal on March 26, 2002 as timely. The pre-hearing conference occurred on May 1, 2002. It was followed by joint inspections of the property on May 9, 2002 (Officer Olegba) and August 9, 2002 (Assistant Supervisor Wright).

CONCLUSIONS:

1. Having destroyed its records of permits and inspections occurring prior to 1970, the Department fails to make its *prima facie* case. For a building constructed since 1970, the Department makes its *prima facie* case when it searches Departmental records and finds no permit record. In this case, for buildings constructed before 1970, the Department has no credible search to base its conclusions upon. Consequently, Appellant Spencer will not be held responsible for obtaining original permits or as-built permits for any building or building improvement constructed prior to 1970. That, however, does not exempt the Appellant from permit compliance with more recent modifications—such as the conversion of the cream house to duplex, the entire structure and modifications of the blue building, and dwelling conversion of the brown building. All of this work is subject to the permit requirements of King County and must be addressed either by demolition or by compliance with current code.
2. A duplex in a single-family residential zone simply is not permitted. Those features of the cream house that make it a duplex must be removed or the occupancy reduced to one tenant family.
3. The entire history of the blue building and its various modifications over time support the conclusion that it must either be demolished or brought into code compliance.
4. Substantial disagreement exists between the Appellant and Department regarding how long it should take to clean up a regulatory mess that was three decades in the making. The Department asks for immediate enforcement. The Appellant asks for 12 months to 24 months. The Department points to the amount of time already taken without success. The Appellant points to the substantial progress toward compliance taken during the past several months, particularly regarding the military surplus storage and sales citation. Although the Department argues that the work accomplished on the military clean-up is not relevant because that aspect of the notice and order is no longer contested, we find that it supports a conclusion that the Department finally has obtained the Appellant's attention and, further, that the Appellant is dutifully and credibly seeking resolution of the issues at hand.

However, the credibility of the Appellant's commitment to comply with applicable codes is diminished by his apparent unwillingness to designate an agent to act on his behalf during the next several months while he is out of the country. Such casual regard for the issues at hand cannot be accepted. Remember that the Uniform Building Code is promulgated nation-wide and adopted by local governments in whole or part as a means of assuring public health and safety. The Appellant proposes to continue allowing three tenants (one on each of the cream house floors and one caretaker in the blue building)

continued occupancy for at least the next half year without addressing matters that the UBC and Uniform Housing Code (UHC) regard as substandard. The order below addresses this problem.²

DECISION:

Regarding the citation for having no original building permit for the cream house and other buildings (except the blue building) the appeal is GRANTED. No original permit or as-built permit will be required.

Regarding the blue building, the appeal is DENIED.

Regarding the various modifications to any and all of the buildings since 1970, the appeal is DENIED.

ORDER:

- A. **No later than November 1, 2002.** The Appellant must show *substantial progress*. “Substantial progress” shall mean:
1. Designate an agent to represent the Appellant and to act on behalf of the Appellant as necessary to obtain required permits and inspections during the Appellant’s absence.
 2. File application for Department of Public Health approval of water source and delivery system.
 3. Serve notice on one of the cream house duplex tenants to vacate the premises no later than November 30, 2002. File a copy of the notice with DDES Code Enforcement.
- B. **No later than June 1, 2003,** all necessary permit applications to achieve code compliance shall be filed. This includes cream house compliance regarding authorized use and structural modifications since 1970 and blue building “as built” permit application.
- C. **No later than November 1, 2003,** the Appellant shall accomplish the following:
1. Either relocate or demolish the L-building, consistent with permitting requirements.
 2. Obtain all permits required to become code compliance with respect to all cited violations involving the cream house and blue building.
 3. Remove all remaining unauthorized outdoor storage.
- B. **No later than June 15, 2004,** the subject property shall be wholly code compliant.

² We observe also that the Department’s sense of urgency appears to disregard the complexity of obtaining compliance for a collection of violations that were three decades in the making.

- C. The brown building, presently unoccupied, shall remain unoccupied until necessary permits and approvals are obtained or it is demolished.
- D. No penalties have accrued to this date. Failure to comply with any of the deadlines stated herein shall result in the immediate accrual of civil penalties authorized by KCC Title 23.
- E. The Department may require abatement as appropriate consistent with applicable code 60 days following failure to meet any of the above deadlines.
- F. Written requests for clarification of this order will not be accepted after September 9, 2002.

ORDERED this 27th day of August, 2002.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 27th day of August, 2002 by certified mail to the following party:

Terry W. Spencer
25615 SE 216th Street
Maple Valley, WA 98038-7604

TRANSMITTED this 27th day of August, 2002, to the following parties and interested persons:

Terry Spencer
25615 SE 216th St.
Maple Valley WA 98038-7604

Elizabeth Deraitus
DDES/BSD
Code Enforcement Supervisor
MS OAK-DE-0100

Ken Dinsmore
DDES/BSD
MS OAK-DE-0100

Ron Halstead
Dept. of Assessments
MS ADM-AS-0708

Beverly Harrelson
DDES/BSD
Code Enforcement Section
MS OAK-DE-0100

DenoBi Olegba
DDES/BSD
Code Enforcement
MS OAK-DE-0100

Heather Staines
DDES/BSD
Code Enforcement-Finance
MS OAK-DE-0100

Lisa Walker
DDES/BSD
Intake & Screening
OAK-DE-0100

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JUNE 20, JULY 30, and AUGUST 20, 2002 PUBLIC HEARING ON
DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO.
E9900157.

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Deno Bi Olegba, Ken Dinsmore, Lisa Walker and Ron Halstead for the Department; and Donald P. Osborne, Terry Spencer, and Karen Spencer for the Appellant.

The following exhibits were offered and entered into the record on June 20, 2002:

Exhibit No. 1	Staff report to Hearing Examiner
Exhibit No. 2	Copy of Notice & Order issued February 21, 2002
Exhibit No. 3	Copy of Appeal Statement received March 26, 2002
Exhibit No. 4	Copies of 5 pictures dated April 16, 2002
Exhibit No. 5A	Letter from Terry Spencer to DDES dated March 14, 2002
Exhibit No. 5B	Letter from Terry Spencer to Sheryl Lux dated April 5, 2001
Exhibit No. 6	King Co. Assessors Residential Property Record
Exhibit No. 7	Copy of a permit search by the Supervisor of the Document Section conducted by DDES dated May 2, 2002
Exhibit No. 8	Copies of Uniform Building Code sections
Exhibit No. 9	Parcel Map from DDES GIS

The following exhibits were offered and entered into the record on July 30, 2002

Exhibit No. 10	Tax Assessor records
Exhibit No. 11	Conceptual site plan (agreed to by parties)

The following exhibits were offered and entered into the record on August 20, 2002

Exhibit No. 12	Report by Steve Wright regarding August 9, 2002, site inspection
Exhibit No. 13A-P	Photos dated 7/29/02 taken by Terry Spencer of the subject property
Exhibit No. 14	Tracing of the property from a Walker & Associates photo
Exhibit No. 15A-C	Walker & Associate aerial photos
	A Dated 4/9/68
	B Dated 3/9/85
	C Dated 9/97
Exhibit No. 16	Letter from Ledo's Pump Service regarding upgrades done in November, 2001, and test results from Amtest Laboratories from water samples collected 7/03/02
Exhibit No. 17	1969 Insurance papers on the house and buildings, showing the use of the brown building as storage and office space
Exhibit No. 18	Letter from Ruby Herron, DDES, dated July 30, 2001, regarding destruction of residential plans.

Exhibit No. 19 Background of property, conclusions, and recommendations for the property
by property

RST:gao
E9900157A RPT